Prasarana Malaysia Bhd v Pentadbir Tanah Daerah Kelang

HIGH COURT (SHAH ALAM) — LAND REFERENCE NO BA-15–75–11 OF 2020
WONG KIAN KHEONG J
29 NOVEMBER 2021

Civil Procedure — Absence of party — Absence of counsel — Respondent applied to strike out land reference due to absence of applicant's counsel during case managements — Whether High Court had power to strike out land reference in a case management when applicant who had filed reference was not present — Rules of Court 2012 O 34 r 6(1)

This was the respondent's application to strike out a land reference due to the absence of the applicant's counsel during case managements. Shah Alam City Centre Sdn Bhd ('landowner') was the registered proprietor of a piece of land ('the said land'). The Selangor State Authority ('SA') had acquired 65,216 sqmt of the said land ('scheduled land') for the construction of the 'Light Rail Transit 3' ('acquisition'). The acquisition was made on behalf of the applicant. The land administrator ('the respondent') had conducted an enquiry under s 12 of the Land Acquisition Act 1960 ('the LAA') to assess the amount of compensation to be awarded to the landowner for the acquisition. The respondent then awarded a sum of RM31,786,550.40 ('compensation sum') as compensation to the landowner for the acquisition ('award'). The respondent had received two objections under s 38 of the LAA following the grant of the award: (a) an objection by the landowner; and (b) an objection by the applicant The two objections were referred to the court by the respondent. Subsequently, four case managements had been held whereby notices for the case managements had been sent to the applicant's address. Counsel for the respondent was present for the four case managements while the applicant's counsel was not present. The respondent then applied to strike out this land reference due to the absence of the applicant's counsel. The questions that arose in the land reference were: (i) whether the High Court had the power to strike out a land reference in a case management when an applicant who had filed the land reference was not present; (ii) if the High Court struck out a land reference in a case management, whether the applicant had the option to apply to the High Court to set aside the striking out order and reinstate the land reference pursuant to O 34 r 6(2) of the Rules of Court 2012 ('the RC') ('first option') or appeal to the Court of Appeal against the striking out order ('second option') under s 49(1) of the LAA read with s 67(1) of the Courts of Judicature Act 1964 ('the CJA'); and (iii) if the two options were available, whether the first option was preferable to the second option in the interest of justice as well as to save judicial resources, time, effort and costs of all parties.

Held, allowing the application:

(1) In this reference, the applicant was a company. As such, by virtue of O 5 r 6(2) and O 34 r 4 of the RC, the applicant should be represented by an advocate and solicitor (not by the applicant's directors, officers, employees, shareholders and agents) in all the case management's in the reference. When the applicant's advocate and solicitor did not attend the case management, the court had a discretion to make any order as the court thought fit under O 34 r 6(1) of the RC, including an order to strike out the land reference. The learned judge exercised his discretion under O 34 r 6(1) of the RC to make the High Court's striking out order because the applicant's advocate and solicitor did not attend the four case managements and case management (23 September 2021) (see paras 22–24).

[Bahasa Malaysia summary

Ini adalah permohonan responden untuk membatalkan rujukan tanah kerana ketiadaan peguamcara pemohon semasa pengurusan kes. Shah Alam City Centre Sdn Bhd ('pemilik tanah') ialah pemilik berdaftar sekeping tanah ('tanah tersebut'). Pihak Berkuasa Negeri Selangor ('SA') telah mengambilalih 65,216 meter persegi tanah tersebut ('tanah berjadual') untuk pembinaan 'Light Rail Transit 3' ('pengambilalihan tersebut'). Pengambilalihan tersebut dibuat bagi pihak pemohon. Pentadbir tanah ('responden') telah menjalankan siasatan di bawah s 12 Akta Pengambilan Tanah 1960 ('APT') untuk menaksirkan jumlah pampasan yang akan diberikan kepada pemilik tanah untuk pengambilalihan tersebut. Responden kemudiannya memberikan award berjumlah RM31,786,550.40 ('jumlah pampasan') sebagai pampasan kepada pemilik tanah untuk pengambilalihan ('award'). Responden telah menerima dua bantahan di bawah s 38 APT berikutan pemberian award tersebut: (a) bantahan oleh pemilik tanah; dan (b) bantahan oleh pemohon. Kedua-dua bantahan tersebut telah dirujuk kepada mahkamah oleh responden. Lanjutan itu, empat pengurusan kes telah dijalankan di mana notis untuk pengurusan kes telah disampaikan ke alamat pemohon. Peguamcara responden telah hadir bagi empat pengurusan kes manakala peguamcara pemohon tidak hadir. Responden kemudiannya memohon untuk membatalkan rujukan tanah ini kerana ketiadaan peguamcara pemohon. Persoalan yang timbul dalam rujukan tanah adalah: (i) sama ada Mahkamah Tinggi mempunyai kuasa untuk membatalkan rujukan tanah dalam pengurusan kes apabila pemohon yang telah memfailkan rujukan tanah tidak hadir; (ii) jika Mahkamah Tinggi membatalkan rujukan tanah dalam pengurusan kes, sama ada pemohon mempunyai pilihan untuk memohon kepada Mahkamah Tinggi untuk mengetepikan perintah pembatalan dan mengembalikan semula rujukan tanah menurut A 34 k 6(2) Kaedah-Kaedah Mahkamah 2012 ('KKM') ('pilihan pertama') atau merayu kepada Mahkamah Rayuan terhadap perintah pembatalan ('pilihan kedua') di bawah s 49(1) APT

dibaca bersama s 67(1) Akta Mahkamah Kehakiman 1964 ('AMK'); dan (iii) jika dua pilihan tersebut tersedia, sama ada pilihan pertama lebih baik daripada pilihan kedua demi kepentingan keadilan serta menjimatkan sumber kehakiman, masa, usaha dan kos semua pihak.

Diputuskan, membenarkan permohonan:

(1) Dalam rujukan ini, pemohon adalah sebuah syarikat. Oleh itu, menurut A 5 k 6(2) dan A 34 k 4 KKM, pemohon hendaklah diwakili oleh peguamcara dan peguambela (bukan oleh pengarah, pegawai, pekerja, pemegang saham dan ejen pemohon) dalam semua pengurusan kes dalam rujukan. Apabila peguamcara dan peguambela pemohon tidak menghadiri pengurusan kes, mahkamah mempunyai budi bicara untuk membuat sebarang perintah yang difikirkan suai di bawah A 34 k 6(1) KKM, termasuk perintah untuk membatalkan rujukan tanah. Hakim yang bijaksana menggunakan budi bicaranya di bawah A 34 k 6(1) KKM untuk membuat perintah pembatalan Mahkamah Tinggi kerana peguamcara dan peguambela pemohon tidak menghadiri empat pengurusan kes dan pengurusan kes (23 September 2021) (lihat perenggan 22–24).]

Cases referred to

Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals [2020] 2 MLJ 721; [2018] 4 CLJ 285, FC (refd)

West Coast Expressway Sdn Bhd v Pentadbir Tanah Daerah Klang [2020] 9 MLJ 337, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 67(1)

Land Acquisition Act 1960 ss 2(1), 12, 12(1), 14, 37(1), (3), 38, 45(2), 49(1), Second Schedule, Form O

Legal Profession Act 1976 s 3

Rules of Court 2012 O 1 r 1(4), O 5 r 6, 6(1), (2), O 32 r 1, O 34 rr 1(1), 4, 6, 6(1), (2)

Rules of the Court of Appeal 1994 r 18(1), (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f), (7), (9)

Applicant not present in Land Reference No BA-15–75–11 of 2020.

Lum Kok Kiong (with Tan Ming Chu) (Lum Kok Kiong & Co) in Land Reference No BA-15–10–03 of 2020 for the applicant.

Mohd Abdul Hakim bin Mohd Ali (Selangor State Legal Advisor's Office) in Land Reference Nos BA-15–75–11 of 2020 and BA-15–10–03 of 2020 for the respondent.

Wong Kian Kheong J:

INTRODUCTION

[1] This land reference to the High Court ('this reference') raises the following three novel questions:

(a) does the High Court have power to strike out a land reference in a case management when an applicant who has filed the land reference, is not present? This issue concerns an interpretation of s 45(2) of the Land Acquisition Act 1960 ('the LAA') read with O 34 rr 1(1) and 6(1) of the Rules of Court 2012 ('the RC');

(b) if the High Court strikes out a land reference in a case management ('striking out order'), whether the applicant has the following two options ('two options') to:

(i) apply to the High Court to set aside the striking out order and reinstate the land reference pursuant to O 34 r 6(2) ('first option'); or

(ii) appeal to the Court of Appeal against the striking out order ('second option') under s 49(1) of the LAA read with s 67(1) of the Courts of Judicature Act 1964 ('the CJA'); and

(c) if the two options are available, whether the first option is preferable to the second option in the interest of justice as well as to save judicial resources, time, effort and costs of all parties.

BACKGROUND

[2] Shah Alam City Centre Sdn Bhd ('land owner') is the registered proprietor of a piece of land in Lot No PT 2562, HSD 298847, Jalan Monfort, Section 13, Bandar Shah Alam, Selangor Darul Ehsan ('land').

[3] The Selangor State Authority ('SA') has acquired 65,216 sqmt of the land ('scheduled land') for the construction of the 'Light Rail Transit 3' project from Bandar Utama to Johan Setia, Klang ('acquisition'). The acquisition was made on behalf of the applicant company ('the applicant') in this reference.

[4] The Land Administrator ('the respondent') had conducted an enquiry under s 12 of the LAA to assess the amount of compensation to be awarded to the land owner for the acquisition ('enquiry').

[5] After the respondent had conducted the enquiry, pursuant to s 14 of the LAA, the respondent awarded a sum of RM31,786,550.40 ('compensation sum') as compensation to the land owner for the acquisition ('award').

[6] With regard to the award, the respondent had received the following two objections under s 38 of the LAA ('two objections'):

(a) an objection by the land owner ('land owner's objection'); and

(b) an objection by the applicant ('applicant's objection').

[7] The respondent had referred the two objections to this court. Consequently, the land owner's objection is registered in court as Land Ref No BA-15–10–03 of 2021 (land owner's reference) while this reference concerns the applicant's objection.

[8] The respondent's reference of the land owner's objection to the High Court in Form O (prescribed in the Second Schedule to the LAA) has stated that the applicant's address is B-20-1, Level 20, Menara UOA Bangsar, No 5, Jalan Bangsar Utama 1, 59000 Kuala Lumpur ('the applicant's address').

[9] The following four case management ('CM') for this reference had been held on:

(a) 9 December 2020;

(b) 8 June 2021;

(c) 27 July 2021; and

(d) 24 August 2021

('four CM's').

[10] Notices for the four CM's had been sent to the applicant's address. Learned counsel for the respondent were present for the four CM's. However, the applicant's learned counsel was not present in all four CM's.

[11] On 23 September 2021, the fifth CM of this reference ('CM (23 September 2021)') was held together with the land owner's reference. This was because this reference and land owner's reference concerned the same scheduled land and should be heard together.

[12] At the CM (23 September 2021):

(a) the respondent's learned counsel applied to strike out this reference due to the absence of the applicant's learned counsel. This court then struck out this reference and the deposit of this reference was ordered to be paid to the respondent as costs ('High Court's striking out order (this reference)'); and

(b) with regard to the land owner's reference:

(i) the land owner's learned counsel, Mr Lum Kok Kiong, informed the court that the land owner's reference was filed because the applicant had filed this reference to reduce the compensation sum without joining the land owner. Mr Lum expressed the land owner's concern that this reference could be heard in the absence of the land owner and to the land owner's detriment; and

(ii) in view of the High Court's striking out order (this reference), Mr Lum applied to withdraw the land owner's reference without prejudice to the land owner's right to apply to reinstate the land owner's reference if this reference is reinstated. I then exercise my discretion to make the following order:

(1) the land owner's reference is struck out with liberty to the land owner to apply to reinstate the land owner's reference if this reference is subsequently reinstated by court;

(2) costs of the land owner's reference in a sum of RM3,000 shall be paid by the applicant to the land owner; and

(3) deposit of the land owner's reference shall be returned to the land owner.

[13] The applicant has filed an appeal to the Court of Appeal against the High Court's striking out order (this reference) ('the applicant's appeal (High Court's striking out order)'). This judgment sets out my reasons for the High Court's striking out order (this reference).

IS THE APPLICANT ENTITLED TO FILE THIS REFERENCE?

[14] The definition of 'person interested' in s 2(1) of the LAA as well as ss 12(1), 37(1), (3) and 45(2) of the LAA are reproduced below:

s 2(1)

'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will;

12 Enquiry by the Land Administrator

(1) *On the date appointed under of subsection 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule*:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

> *37 Application to Court*
>
> (1) *Any person interested in any scheduled land who, pursuant to any notice under* section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, *has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to —*
>
> (a) the measurement of the land;
>
> (b) *the amount of the compensation*;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.
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> ...
>
> (3) *Where the total amount of any award exceeds thirty thousand ringgit, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1).*
>
> 45(2) *Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.* (Emphasis added.)

[15] In *West Coast Expressway Sdn Bhd v Pentadbir Tanah Daerah Klang* [2020] 9 MLJ 337 at paras [11]–[14], I have followed the Federal Court's judgment delivered by Zulkefli Ahmad Makinuddin PCA in *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721; [2018] 4 CLJ 285 at paras [8], [28]–[39] and [42] ('*TNB*'s case'), to decide that a person on whose behalf the SA has acquired land under LAA, has no right to file a land reference to the High Court under s 37(1) of the LAA:

> [11] *Firstly, I refer to Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721; [2018] 4 CLJ 285*, at [8], [28]–[39] and [43], (TNB's case), a judgment of the Federal Court delivered by Zulkefli Ahmad Makinuddin PCA, as follows*:
>
> [8] The Federal Court allowed the motion for leave to appeal by TNB on the following questions of law:
>
> 1. *Whether the filing of an objection vide Form N pursuant to [s 37 LAA] is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court?*
>
> 2. *Whether the paymaster has a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the Land Administrator is being subject to challenge at the High Court?*
>
> 3. *Whether the paymaster upon being given leave to intervene in the land*

reference can be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the [LAA]?

...

[28] *We noted that the undisputed facts in the present case showed that during the land acquisition hearing before the Land Administrator, the landowner, Unggul Tangkas, was present. TNB was also present. It was also not disputed that during the course of the acquisition hearing, TNB was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise*.

[29] *We are of the view the provisions of the Act made it clear that the lodging of Form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award*.

[30] *As regards TNB's application in encl. 7 to intervene in the acquisition proceedings under O 15 r 6(2)(b) [RC], we agree with the submission of learned counsel for Unggul Tangkas that s 45(2) of the Act does not lend assistance to TNB's cause of action. Section 45(2) of the Act does not allow for an enlargement of the scope of the specific framework under the Act ...*

[31] *We are of the view that s 45(2) [LAA] only provides for the complementary role of [RC] to the [LAA] if it does not run contrary to the provisions of the Act. [O 15 r 6(2)(b) RC] in the context of the present case does not have any application. On this point, we cite with approval the observation made by His Lordship KN Segara JCA in the case of Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor and other appeals* [2011] 4 MLJ 403; [2011] 1 CLJ 95 as follows:

> *In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the [LAA] as regards to the manner and circumstances in which 'persons interested' under the [LAA] are to participate in proceedings either before the Land Administrator at an enquiry or, in court, upon a reference by the Land Administrator upon any objection to an Award. Filing of Form N is the most appropriate and the only mode available under the [LAA] to any person interested under the [LAA] to become a party in a Land Reference at the High Court relating to an objection to the amount of compensation.*

[32] Learned counsel for TNB referred to us the Court of Appeal case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809; [2009] 4 CLJ 57 to support his contention that our courts have recognised an intervener's application pursuant to [O 15 r 6(2)(b) RC] can be made in land reference proceedings. This case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd* was decided earlier than the Court of Appeal case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd.* The case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd* was a split decision wherein the majority was of the view that [O 15 r 6(2)(b) RC] was applicable in consideration whether SPRINT as an

'interested party' could be rightly added in the land reference proceedings. It would appear that there was a conflict between these two decisions of the Court of Appeal on the issue of intervention by a party in land reference proceedings before the panel of the Court of Appeal in the present case.

[33] *On a careful examination of the above two conflicting decisions of the Court of Appeal cases, we are of the view that the decision in the case of Sistem Lingkaran Lebuhraya Kajang Sdn Bhd which was followed by the Court of Appeal in the present case was correctly decided on this issue. The court in Sistem Lingkaran Lebuhraya Kajang Sdn Bhd had considered the totality of the circumstances of the case in the light of the scheme of the Act and the kind of special regime it has created, such that [O 15 r 6(2)(b) RC] is not applicable for the purpose of making a party either a co-respondent or an intervener. We fully endorse the views expressed and the decision arrived at in the case of Sistem Lingkaran Lebuhraya Kajang Sdn Bhd.*

[34] *As regards the case of Damai Motor Credit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44 *relied on by TNB on the application of [O 15 r 6(2)(b) RC] to acquisition proceedings, we are of the view the factual matrix of the said case is distinguishable from the present case. In the Damai Motor Kredit case, the appellant/landowner whose land had been acquired under the Act was not informed and named as a party in the originating summons ('OS') filed by the respondent (Kementerian Kerja Raya Malaysia) in the OS application for extension of time to file Form N to the Land Administrator who had awarded a sum of award which was subsequently objected to by the respondent. The appellants did not know about the OS and were never served with the application. They only became aware of the OS after the application for an extension of time to file Form N with the Land Administrator was granted. They subsequently filed in the High Court a summons-in-chambers (the SIC) for leave to intervene in the action by the respondent and to set aside the court order granting the respondent the OS.*

[35] *The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. The Court of Appeal allowed the appellants' appeal and inter alia held that clearly the appellants in the Damai Motor Kredit case were persons interested who were within the contemplation of s 2 [LAA]. The position of the appellants/landowner in the Damai Motor Kredit case was clearly made out, where their interests were at stake as landowners. The question of them applying to be made interveners did not arise at all. They were the original parties in the proceedings before the Land Administrator. As such, they ought to be named in the OS proceedings by the respondent.*

[36] *We are of the view the Court of Appeal in the Damai Motor Kredit had rightly ruled that the learned High Court Judge was in error when he denied the appellants' application to be made interveners. With respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix of the present case would not warrant a similar treatment for TNB.*

[37] *It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest. (See the case of Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344*). The evidence in the present case*

showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s 43 [LAA]) and whose interests must be considered by the court whether they have objected or not (see s 44(2) [LAA]) without the need for intervention.

[38] *We are of the view that it was for the Land Administrator to defend the award and, as declared by the Privy Council in the case of Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43; [1968] 1 LNS 31, *the Land Administrator was fully entitled to lead such evidence as he considered necessary to do so*.

[39] *In the present case, we take the view that the High Court was correct to deny TNB's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to TNB who was present during the enquiry. We agree with the views expressed by the Court of Appeal in the present case that the interest of TNB was clearly taken care by the legal team representing the Land Administrator. Anything that needed to be submitted for TNB must have been taken up by the legal team. We would add here that the same process could be replicated during the land reference proceedings before the High Court Judge. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl 7 filed by TNB.*

...

[43] *For the reasons above-stated, we would answer question 1 posed in these appeals in the affirmative. Other than the Land Administrator, only a person who has properly objected to an award under s 37 [LAA] is entitled to be a party to the land reference proceedings with all the rights that entails. Question 2 should be answered in the negative. A paymaster is not so entitled as a matter of course. Question 3 ultimately hinges on TNB succeeding in these appeals in respect of questions 1 and 2. Therefore, there is no necessity for us to answer question 3. In any event, the question of valuer's report is a matter that ultimately concerns the second respondent (the Land Administrator) in defending the award.* (Emphasis added.)

[12] *As a matter of stare decisis, I am bound by the Federal Court's judgment in TNB's Case. In my respectful view, TNB's case is fortified by the following reasons*:

(1) *s 37(1) LAA confers a right to object to, among others, the amount of land compensation, on any 'person interested in any scheduled land'. Section 2(1) LAA defines 'scheduled land' as land included in a schedule prepared under s 8 LAA, namely land to be acquired by SA.*

The Plaintiff is only interested in the amount of land compensation to be paid by the Plaintiff pursuant to the Concession. The Plaintiff is not interested in the 'scheduled land' within the meaning of s 37(1) LAA; and

(2) *our s 37(1) LAA is materially different from s 18(1) of the Indian Land Acquisition Act 1894 [LAA (India)]. Section 18(1) LAA (India) provides as follows:*

18 Reference to court

(1) *Any person interested who has not accepted the award may, by written*

application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. (Emphasis added.)

Section 18(1) LAA (India) uses the term 'person interested' and not the phrase 'person interested in any scheduled land' [employed in our s 37(1) LAA]. Accordingly, Indian cases on s 18(1) LAA (India) which allow a paymaster of land compensation to intervene in land references, do not apply in the context of our s 37(1) LAA.

In view of the wording of s 37(1) LAA (as explained above), the definition of 'person interested' in s 2(1) LAA does not apply to confer a right to file Form N on a paymaster of the land compensation. In any event, all definitions in s 2(1) LAA apply to the other provisions in LAA 'unless the context otherwise requires'. The context of s 37(1) LAA does not require the application of the definition of 'person interested' in s 2(1) LAA to s 37(1) LAA.

[13] *Based on TNB's Case and the reasons explained in the above paragraph 12, even though the Plaintiff is the paymaster of the 8 Awards, the Plaintiff is not a person interested in the 8 Acquired Lots within the meaning of s 37(1) LAA. Accordingly, the Plaintiff is not entitled to file Form N under s 37(1) LAA in respect of the 8 Acquired Lots. On this ground alone, the Plaintiff is not entitled to any extension of time to file Form N and as a corollary, the 8 OS must be dismissed with costs.*

[14] *I have not overlooked s 37(3) LAA. Section 37(3) LAA deems a person (X) to be a 'person interested' when the following two conditions in s 37(3) LAA are fulfilled:*

(1) the total amount of the award exceeds RM30,000; and

(2) *X is any Government or any person or corporation on whose behalf land is to be occupied or used pursuant to Part VII of LAA (second Condition). Part VII of LAA concerns SA's procurement of land for temporary occupation and use for a period not exceeding three years when the land is needed under s 57(a), (b) or (c) LAA.*

Part VII of LAA does not apply to the 8 Acquired Lots. As the second Condition is not met in this case, the Plaintiff is not a person interested in the 8 Acquired Lots under s 37(1) read with (3) LAA. (Emphasis added.)

[16] The appeal to the Court of Appeal against my decision in *West Coast Expressway* has been withdrawn by the highway concessionaire company (on whose behalf the land in question was acquired by the SA under the LAA).

DOES THE COURT HAVE POWER TO HOLD CM IN LAND REFERENCES?

[17] I reproduce below O 34 rr 1(1) and 6 of the RC:

O 34 r 1(1) *Notwithstanding anything in these Rules, the Court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the*

proceedings to appear before the Court, in order that the Court may make such order or give such direction as it thinks fit so that:

(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and

(b) *such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof*.

O 34 r 6(1) *If, at the time appointed for the pre-trial case management, any party fails to attend, the Court may* dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or *make such other order as the Court thinks fit*.

(2) *An order made by the Court in the absence of a party concerned or affected by the order may be set aside by the Court, on the application of that party, on such terms as it thinks just*.

(3) Without prejudice to the preceding paragraphs of this rule, where any party to the action or proceedings fails to attend the pre-trial case management, the Court may, if it thinks fit, adjourn the case management. (Emphasis added.)

[18] The LAA does not provide for CM regarding land references. However, I am of the following view:

(a) the High Court hearing land references has a discretionary power under s 45(2) of the LAA read with O 34 r 1(1) of the RC to hold CM's concerning land references ('CM (Land Reference)'); and

(b) the purpose of a CM (Land Reference) is to ensure a just, expeditious and economical disposal of the land reference.

WHETHER THE COURT MAY STRIKE OUT LAND REFERENCE IF APPLICANT OR APPLICANT'S SOLICITOR IS NOT PRESENT IN CM (LAND REFERENCE)

[19] Order 5 r 6 and O 34 r 4 of the RC provide as follows:

O 5 r 6

(1) *Subject to paragraph (2) and Order 76, rule 2, any person, whether or not he sues as trustee or personal representative or in any other representative capacity, may begin and carry on proceedings in the Court by a solicitor or in person.*

(2) *Except as expressly provided by or under any written law, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor*.

O 34 r 4 *The parties to the action or proceedings may be represented at the pre-trial case management by their solicitor, if any, but may, if they so desire, with the leave of the Court, attend the pre-trial case management personally, at the time originally appointed or as adjourned, in addition to their solicitor*. (Emphasis added.)

[20] If an applicant of a land reference is an individual ('individual applicant'), the individual applicant may personally attend a CM (Land Reference). The individual applicant may also appoint a 'solicitor' to represent the individual applicant in a CM (Land Reference). This is clear from O 5 r 6(1) and O 34 r 4 of the RC. According to O 1 r 1(4) of the RC, a 'solicitor' means an Advocate and Solicitor ('A&S') as defined in s 3 of the Legal Profession Act 1976.

[21] Notwithstanding O 5 r 6(1) and O 34 r 4 RC, if an applicant in a land reference is a company ('corporate applicant'), O 5 r 6(2) of the RC requires a corporate applicant to be represented by an A&S in all legal proceedings, including a land reference and CM (Land Reference).

[22] In this reference, the applicant is a company. As such, by virtue of O 5 r 6(2) and O 34 r 4 of the RC, the applicant should be represented by an A&S (not by the applicant's directors, officers, employees, shareholders and agents) in all the CM's in this reference.

[23] When the applicant's A&S did not attend the CM (23 September 2021), the court has a discretion to make any order as the court thinks fit under O 34 r 6(1) of the RC, including an order to strike out this land reference. The court's power to strike out a land reference in a CM (Land Reference) is clear from the words in O 34 r 6(1) RC ('the Court may ... make such other order as the Court thinks fit').

[24] Premised on the absence of the applicant's A&S in the four CM's and CM (23 September 2021), the respondent's learned counsel, Encik Mohd Abdul Hakim bin Mohd Ali, had applied for the court to strike out this reference. I exercise my discretion under O 34 r 6(1) of the RC to make the High Court's striking out order (this reference) because the applicant's A&S did not attend the four CM's and CM (23 September 2021).

AVAILABILITY OF TWO OPTIONS UPON HIGH COURT'S STRIKING OUT ORDER (THIS REFERENCE)

[25] Upon the High Court's striking out order (this reference), the applicant has two options as follows:

(a) the first option is for the applicant to apply to the High Court under O 34 r 6(2) of the RC to set aside the High Court's striking out order (this reference) and reinstate this reference; or

(b) the applicant has the second option of appealing to the Court of Appeal against the High Court's striking out order (this reference) under s 49(1) of the LAA read with s 67(1) of the CJA. I reproduce below s 49(1) of the

LAA and s 67(1) of the CJA:

> LAA
>
> 49(1) *Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the [High Court] to the Court of Appeal* and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.
>
> CJA
>
> 67(1) *The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought*. (Emphasis added.)

[26] I am of the view that the first option (not the second option) should have been adopted by the applicant in this case. My reasons are as follows:

(1) by way of the first option, the applicant has an opportunity to explain in its affidavit regarding why the applicant's A&S was absent in all the CM's in this reference. Hence, it is in the interest of justice as well as in the applicant's interest to proceed with the first option;

(2) if the High Court dismisses the applicant's application pursuant to O 34 r 6(2), the applicant then has a right to appeal to the Court of Appeal against this decision under s 49(1) of the LAA and s 67(1) of the CJA. There is thus no prejudice to the applicant if the applicant adopts the first option;

(3) the first option is much more expeditious than the second option due to the following reasons:

(a) by way of the first option:

(i) the applicant is only required to file a notice of application (please refer to O 32 r 1 of the RC) supported by an affidavit. To expedite the first option, the applicant's A&S may file a 'Certificate of Urgency'; and

(ii) the first option does not require the High Court to provide 'Grounds of Judgment' (GOJ) for the High Court's striking out order (this reference);

(b) if the applicant has adopted the second option:

(i) the applicant has to wait for the GOJ;

(ii) once the applicant has received the GOJ, the applicant has to prepare a 'Memorandum of Appeal' ('MA') which contains the grounds of the applicant's appeal against the High Court's striking out order (this reference) — please refer to r 18(1) of the Rules of the Court of Appeal 1994 ('the RCA'); and

(iii) the applicant is required to file and serve a record of appeal which contains, among others, the GOJ and MA — please see r 18(4)(a)–(f), (7) and (9) of the RCA;

(4) as explained in the above sub-para (2), the applicant has to expend more time and effort as well as incur higher costs in the second option vis a vis the first option; and

(5) the applicant's adoption of the second option in this case unnecessarily increases the workload of the Court of Appeal when a simple, more expeditious and economical first option is available to the applicant.

ABUSE OF COURT PROCESS BY THE APPLICANT

[27] While the applicant's appeal (High Court's striking out order) is still pending in the Court of Appeal, on 22 October 2021, the applicant has filed an application in court encl No 10 to set aside the High Court's striking out order (this reference) and reinstate this reference under s 45(2) of the LAA read with O 34 r 6(2) of the RC ('encl 10').

[28] Regrettably, I am of the view that the applicant has abused court process by filing the applicant's appeal (High Court's striking out order) and encl 10. This is because there is a duplicity in legal proceedings instituted by the applicant (by way of both the applicant's appeal (High Court's striking out order) and encl 10) for the same relief, namely the setting aside of the High Court's striking out order (this reference) and reinstatement of this reference. The applicant should have either:

(a) proceed with the applicant's appeal (High Court's striking out order) in the Court of Appeal without filing encl 10; *or*

(b) apply to the Court of Appeal to withdraw the applicant's appeal (High Court's striking out order) with liberty to file afresh and proceed with encl 10. If encl 10 is subsequently dismissed by the High Court ('High Court's decision (encl 10)'), the applicant may then file an appeal to the Court of Appeal against the High Court's decision (encl 10).

[29] With this judgment, it is hoped that the applicant will withdraw the applicant's appeal (High Court's striking out order) in the Court of Appeal

with liberty to file afresh and proceed expeditiously with encl 10. A

Application allowed.

Reported by K Selvaraju B

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